

HIKO BELL MINING & OIL COMPANY

IBLA 71-253

Decided May 9, 1972

Appeal from decision U 13946 etc., by Utah state office, Bureau of Land Management, rejecting applications for coal prospecting permits.

Affirmed.

Coal Leases and Permits: Applications -- Coal Leases and Permits:
Lands Subject to -- Applications: Generally

Land included in an outstanding coal prospecting permit is not available for permit to another, and an application for such land must be rejected.

Federal Employees and Officers: Authority to Bind Government --
Public Records

Erroneous advice given by employees of the Bureau of Land Management through incorrect notations on the historical index or by a public notice as to availability of land cannot confer a right not authorized by law.

OPINION BY MR. HENRIQUES

Hiko Bell has appealed from a decision dated March 11, 1971, by which the Utah state office, BLM, rejected its applications for coal prospecting permits, U-13946, U-13947, U-13954, U-13955 and U-13957, because all the land described in these applications was included in existing coal prospecting permits U-5666, U-5667, U-5668, U-5669 and U-5670, held by the Sun Oil Company. 1/

1/ The lands described in the Hiko Bell applications are:

U 13946 - All secs. 1, 3, 4, 5, 9, 10, 11 and 14, T. 38 S., R. 2 E.,
permit U 5668.

S.L.M., within

U 13947 - All secs. 15, 21, 22, 23, 25, 26, 27 and 28, T. 38 S., R.
2 E., S.L.M., within permit U 5669.

U 13954 - All secs. 23, 26, 27, 28, 29, 33, 34 and 35, T. 37 S.,
R. 2 E., S.L.M., within permit U 5667.

U 13955 - All secs. 21, 22, 27 and 28, SW 1/4 SW 1/4 sec. 23, W 1/2
SW 1/4 sec. 25, W 1/2, SE 1/4, SW 1/4 NE 1/4 sec. 26, W 1/2
sec. 33, T. 35 S., R. 2 E., S.L.M., within permit U 5670.

The appellant contends that Sun had not timely paid rental in connection with its coal prospecting permits so that the permits terminated under their terms. Sun answered by stating that the rentals had been timely paid.

The record shows that each of the coal prospecting permits held by Sun had been issued as of July 1, 1969, for a 2-year term, with payment of annual rental at the rate of 25 cents per acre due on or before July 1, 1970, for the second permit year. ^{2/} Receipts in each case file show that the subject rentals were paid June 24, 1970, within the period required by the permit terms, as asserted by Sun. The record further shows that through inadvertence or mischance, the historical index pages in the land office were noted to show termination of each of the coal prospecting permits of Sun, and public notice was given on July 20, 1970, that the lands were open to further coal prospecting permit applications. These errors were corrected in March 1971. On March 3, 1971, and prior to time the historical index pages were corrected, Hiko Bell filed its applications.

Land included within an outstanding coal prospecting permit is not available for coal permit to another, and an application for such land must be rejected. George E. Conley, 1 IBLA 227 (1971). At the time of filing, all of the lands described in the Hiko Bell applications were covered by the outstanding permits of Sun, despite the incorrect notice to the contrary given by the land office.

Erroneous information given by employees through incorrect notation of public records of BLM cannot serve to give a party rights in law he could not otherwise have. H. E. Baldwin, and John R. Keeling, 3 IBLA 71 (1971).

The evidence clearly shows that the coal prospecting permits of Sun have been properly maintained, including timely payment of rental, so that the lands therein were not available when the Hiko Bell applications were filed. The Hiko Bell applications were properly rejected.

fn. 1 (Cont.)

U 13957 - E 1/2, SW 1/4 sec. 10, W 1/2, W 1/2 SE 1/4 sec. 14, NE 1/4, E 1/2 NW 1/4 sec. 19, all secs. 15, 20, 21 and 22, T. 37 S., R. 2 E., S.L.M., within permit U 5666.

^{2/} Pursuant to 43 CFR 3511.3-1 (1972) the prospecting permits of Sun have been extended for 2 years from July 1, 1971.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is affirmed.

Douglas E. Henriques, Member

We concur:

Frederick Fishman, Member

Joseph W. Goss, Member

